

HUMAN RIGHTS AND MIGRATION LAW CLINIC

EXPERT OPINION SUBMITTED TO THE COURT OF JUSTICE OF THE EUROPEAN UNION IN CASE NO. C-710/19, *G.M.A. V. BELGIUM*

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Executive summary

This expert opinion concerns two preliminary questions referred by the Belgian Council of State. The first preliminary question concerns the delay that an EU jobseeker receives to apprise himself of offers of employment corresponding to his occupational qualifications and to take the necessary steps in order to be engaged. The second preliminary question concerns the question whether the Council for Alien Law Litigation (CALL)¹ should be given the power to take account of new factual elements which have arisen after the contested decision refusing or withdrawing the right of residence of a Union citizen.

The first preliminary question

The CALL acknowledges in the majority of its analysed judgments that a Union citizen seeking employment must be given a reasonable period of time to inform himself of offers of employment corresponding to his occupational qualifications and to take, where appropriate, the necessary steps in order to be engaged. The CALL bases itself on what the Court of Justice has ruled in the Antonissen case. According to the CALL, the effectiveness of the right to freedom of movement for workers is secured in so far as Community legislation or, in its absence, the legislation of a Member State gives Union citizens a reasonable time, in the territory of the Member State, to apprise themselves of offers of employment. After a reasonable period of time, a Union citizen may be required to leave the territory of the host Member State, unless the Union citizen provides evidence that he is continuing to seek employment and that he has a genuine chance of being engaged. In these judgments, the CALL does not clarify the duration of the reasonable period to find a job.

In a limited number of the analysed judgments, the CALL ruled that an EU jobseeker is entitled to six months as a reasonable period of time to prove that he can find a job. A period of six months is not insufficient to allow the Union citizen to apprise himself of offers of employment and does not jeopardize the effectiveness of the principle of freedom of movement. However, six months is not regarded as a *de facto minimum period*. In five judgments the Immigration Office² put an end to the right of residence of EU jobseekers before a period of six months had elapsed since the application for a declaration of registration as an EU worker or an EU jobseeker. According to the CALL, a period of less than six months can ensure the effectiveness of the principle of free movement. Depending on the personal circumstances of the Union citizen, the CALL may consider that a period of less than six months is a reasonable period to apprise himself of offers of employment and, where appropriate, to take the necessary steps to be engaged.

The second preliminary question

The CALL is an administrative court. He does not act as an appeal court which will assess the true facts of the case. He only examines whether the Immigration Office has been able to reasonably establish the facts and whether there is no information in the case file that is incompatible with this determination, whether it has based its assessment of the application on the correct factual information, whether it assessed it correctly and whether it did not come to its decision unreasonably on that basis.

¹ The Council for Alien Law Litigation (Raad voor Vreemdelingenbetwistingen/ Conseil du Contentieux des Etrangers) is the administrative tribunal with special jurisdiction over migration cases. Hereinafter 'CALL'.

² Immigration Office stands for 'Dienst Vreemdelingenzaken' / 'Office des étrangers'.

The CALL stipulates that it would exceed its powers by taking into account, in its review of legality, factual elements dating from after the contested decision. In its capacity as an administrative tribunal, the CALL has to assess the regularity of an administrative decision on the basis of information available to the Immigration Office at the time of its decision. Consequently, the CALL cannot take into account elements and documents subsequently submitted to the appeal. The Council may not, within the framework of its power to review legality, take into account documents that were not made available to the Immigration Office at the time when the contested decision was taken.

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Introduction

In this research, we³ carried out a case law analysis of the jurisprudence of the Belgian Council for Alien Law Litigation (CALL) in order to investigate the Belgian practice. We examined whether the CALL recognises in its case law that EU jobseekers should be given a period of at least six months to look for a job. If not, it will be determined whether the CALL considers another period as a reasonable period of time in which to apprise oneself of offers of employment corresponding to one's occupational qualifications and to take the necessary steps in order to be engaged. Secondly, it will be examined whether, in appeal proceedings before the CALL, the CALL must be empowered to take into account new factual elements which have arisen after a decision has been taken to refuse or withdraw residence rights of EU nationals.

This expert opinion will first address the raised preliminary questions in Chapter 1. Chapter 2 will set out the methodology. The legal framework is explained in Chapter 3. Chapter 4 contains the results of the case law analysis, provided with the necessary interpretations. Chapter 5 presents the conclusions that were drawn.

³ This research was carried out by Jeffrey Roegiers, Lukas Asselman and Renee Van Achter (students at Ghent University) under the supervision of Benoit Dhondt, on behalf of the Human Rights and Migration Law Clinic at Ghent University.

1 Preliminary questions

1. A Greek national lodges an administrative appeal with the Belgian Council of State against a decision of the Council for Alien Law Litigation of 28 June 2018.⁴ The Council of State referred two preliminary questions to the Court of Justice of the European Union.⁵

2. The first preliminary question is the following: Does Article 45 TFEU have to be interpreted and applied in such a way that the host Member State has the obligation, first, to provide a jobseeker with a reasonable time in which to apprise himself of offers of employment corresponding to his occupational qualifications and to take the necessary steps in order to be engaged, second, to ensure that the time limit allowed to look for employment cannot in any event be less than six months and, third, to permit the presence on its territory of a jobseeker during the entire duration of this delay without requiring him to provide proof that he has a genuine chance of being engaged?

3. The second preliminary question is the following: Are Articles 15 and 31 of Directive 2004/38 of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States and Articles 41 and 47 of the Charter of Fundamental Rights of the European Union and the general principles of supremacy of EU law and the effectiveness of directives to be interpreted and applied in such a way that the national courts of the host Member State, when acting within the scope of an action for annulment of a decision refusing recognition of an EU citizen's right of residence of more than three months, under a duty to take into consideration new factual matters which occurred after the final decision of the competent authorities where these are likely to lead to a change in the situation of the person concerned so as to no longer justify a limitation of the latter's right of residence in the host Member State?

4. The first preliminary question concerns the question whether Union citizens seeking employment must be given at least six months in which to look for a job without having to prove that they have a genuine chance of being employed. This is essentially asking for clarification of the ruling in the Antonissen case of 26 February 1991⁶. With the second question referred for a preliminary ruling, the Council of State asks whether the CALL should be given the power to take account of new factual elements which have arisen after the contested decision refusing or withdrawing the right of residence of a Union citizen. The applicant seeks clarification of the joined cases Orfanopoulos and Olivieri of 29 April 2004.⁷

5. This report aims to determine the position of the CALL on the above-mentioned preliminary questions, through a case-by-case analysis of its jurisprudence.

⁴ A Greek national applies for a residence permit as a Union citizen seeking work on 27 October 2015. The Immigration Office refuses to recognize his right of residence because, according to the Office, the applicant does not prove that he has a genuine chance of being engaged. See CCE, 28/06/2018, n° 206.186.

⁵ RvS, 12 September 2019, nr. 245.426.

⁶ Court of Justice 26 February 1991, nr. C-292/89, ECLI:EU:C:1991:80, 'Antonissen'.

⁷ Court of Justice 29 April 2004, nr. C-482/01 and nr. C-493/01, ECLI:EU:C:2004:262, 'Orfanopoulos and Olivieri'.

2 Methodology

6. In order to select the case law, we used the database of the CALL.⁸ Both judgments of the Dutch language role and of the French language role were included in the analysis. The selection of the case law was made separately for the first and second preliminary questions.

7. Concerning the first preliminary question, we selected case law in four steps. In the first step, we selected the judgments on the basis of the origin of the applicant(s). The applicant(s) is/are a national of a Member State of the European Union. In the second step, search terms were entered. Different search terms were used for each search query and for each language role. For the Dutch language role, judgments were sought in which the keywords “reële kans op tewerkstelling” (genuine chances of being engaged), “Antonissen”, “C-292/89”, “reële kans op tewerkstelling” (genuine chances of being engaged) in combination with “redelijke termijn” (reasonable period) were used. These search terms yielded 401, 36, 41 and 38 results respectively. For the French language role, the search terms “chance réelle d’être engagé” (genuine chances of being engaged) and “Antonissen” were entered.⁹ This yielded 118 and 19 results respectively. In the third step, these 653 judgments were reduced to ‘relevant’ judgments. Only the judgments in which the applicant, as an EU jobseeker applied for a residence application of more than three months were included in the analysis. In addition, only those judgments in which there was actually a problem concerning the (reasonable) period of time that must be given to an EU jobseeker in order to be able to inform himself of job offers were selected. These judgments were analysed in Excel according to the following criteria: judgment number, date of judgment, language role, origin of the applicant(s), the judge who took the decision, whether or not there was a reference to the Antonissen case, whether the CALL recognised the reasonable period of time, on what grounds this recognition/rejection took place and whether the judgment concluded with a rejection or annulment.

8. Concerning the second preliminary question, we also selected case law in four steps. In the first step, we selected the judgments on the basis of the origin of the applicant(s). The applicant(s) has/have the nationality of a Member State of the European Union. In the second step, search terms were entered. Different search terms were used for each search query and for each language role. For the Dutch language role, the search terms “nieuwe elementen” (new elements) and “wettigheidstoetsing” (review of legality) were entered. These search terms yielded 49 and 87 results respectively. For the French language role, the search terms “nouveaux éléments” (new elements), “postérieurement à la décision” (subsequent to the decision), “postérieur à l’acte attaqué” (subsequent to the contested decision) and “contrôle de légalité” (review of legality) were used.¹⁰ This yielded 27, 24, 17 and 522 results respectively. In the third step, these 590 judgments were reduced to ‘relevant’

⁸ As of 1 November 2010, all judgments are published on the website of the Council for Alien Law Litigation, with the exception of withdrawals, absences from the hearing, waiver of the claim, claims without object and inadmissible claims. Before 1 November 2010, the Council only published judgments that were relevant to the legal practice. See X, “Publicatiebeleid”, consulted on www.rvv-ccle.be/nl/arr/publicatiebeleid.

⁹ We also used the search term “C-292/89” for the French language role. This yielded only one result that had already been found using the search term “Antonissen”. For the French language role, the search term “chance réelle d’être engagé” (genuine chances of being engaged) in combination with “délai raisonnable” (reasonable period) was entered. This combination yielded 120 results. Only two of these were relevant judgments, and they had already been found with the search term “chance réelle d’être engagé” (genuine chances of being engaged).

¹⁰ We decided to use the research terms “postérieurement à la décision” (subsequent to the decision) and “postérieur à l’acte attaqué” (subsequent to the contested decision) because both terms appear in the judgments of the French language role. Both search terms have produced overlapping as well as new relevant results.

judgments. Only the judgments in which the applicant(s) had submitted an application for the issue of a declaration of registration in the capacity of employee, self-employed person, jobseeker, holder of sufficient means of subsistence or student were analysed. Judgments concerning an application for international protection submitted by an EU citizen as well as judgments concerning an application for family reunification were excluded from the analysis. In the fourth step, the relevant judgments were analysed in Excel according to the following criteria: judgment number, date of judgment, language role, origin and capacity of the applicant, the judge who took the decision, the question whether the CALL takes account of new elements and on what grounds this recognition/rejection took place.¹¹

3 Legal framework

3.1 Legal framework of the first preliminary question

9. The Belgian Council of State asks the Court of Justice whether Article 45 TFEU has to be interpreted and applied in such a way that the host Member State has the obligation, first, to give an EU jobseeker a reasonable period in which to inform himself of offers of employment and to take the necessary steps in order to be engaged, second, to ensure that the time limit allowed to look for employment cannot in any event be less than six months.

10. The freedom of movement for persons has been a cornerstone of European Community law since the creation of the European Economic Community through the Treaty of Rome of 1957.¹² Pursuant to Article 45 TFEU (former Article 39 EC), freedom of movement for workers means that a Union citizen has the right to accept offers of employment, to move freely within the territory of Member States for this purpose and to reside freely in a Member State for the purpose of employment in accordance with the provisions governing the employment of nationals of that State laid down by law, regulation or administrative action.¹³

11. The free movement of workers implies that nationals of EU Member States have the right to move and reside freely within the territory of other Member States in order to seek work. The CALL confirms this principle¹⁴, following the Antonissen case of 26 February 1991.¹⁵ In the Antonissen case, the Court of Justice ruled that the

¹¹ In each case, a brief summary of the facts, the applicant's pleas in law and the assessment of the CALL were presented in a separate document.

¹² J.-Y. CARLIER en S. SAROLEA, *Droit des étrangers*, Brussel, Larcier, 2016, 291; H. VERSCHUEREN, "De nieuwe Europese verblijfsrichtlijn 2004/38 sinds 30 april 2006 van toepassing: het Europese burgerschap op kruissnelheid", *T. Vreemd*. 2006, nr. 2, (97) 97. The free movement of workers was finally established in 1968 with REGULATION (EEC) No 1612/68 OF THE COUNCIL of 15 October 1968 on freedom of movement for workers within the Community, PB L 19 Octobre 1968, afl. 257. In H. VERSCHUEREN, "De nieuwe Europese verblijfsrichtlijn 2004/38 sinds 30 april 2006 van toepassing: het Europese burgerschap op kruissnelheid", *T. Vreemd*. 2006, nr. 2, (97) 97.

¹³ Article 45 TFEU.

¹⁴ Judgments of the Council for Alien Law Litigation of the Dutch language role are abbreviated with 'RvV'. Judgments of the French language role are abbreviated with 'CCE'.

¹⁵ Court of Justice 26 February 1991, nr. C-292/89, ECLI:EU:C:1991:80, 'Antonissen', para. 16; RvV 26/03/2012, nr. 78.016; RvV 13/11/2014, nr. 133.163; RvV 2/02/2015, nr. 137.745; RvV 9/04/2015, nr. 142.917; RvV 15/06/2015, nr. 147.770; RvV 26/06/2015, nr. 148.651; RvV 26/06/2015, nr. 148.637; RvV 21/09/2015, nr. 152.984; RvV 3/06/2016, nr. 169.072; RvV 24/06/2016, nr. 170.483; RvV 16/07/2016, nr. 171.955; RvV 19/04/2017, nr. 185.549; RvV 24/11/2017, nr. 195.523; CCE 1/03/2019, n° 217.849.

right to free movement, which is one of the foundations of Community law, must be given a broad interpretation.¹⁶ The question was raised whether the right of residence of a Union citizen in order to seek work in another Member State can be limited in time. The Court of Justice ruled that a Member State may provide a reasonable period of time for a Union citizen to inform himself, in the territory of the host State, of offers of employment corresponding to his occupational qualifications and to take, where appropriate, the necessary steps in order to be engaged. However, Community law does not impose a time limit on the right of residence of an EU national in a host Member State in order to seek work. The Court of Justice has ruled in the Antonissen case that a period of six months does not appear, in principle, to be insufficient to enable the persons concerned to apprise themselves, in the host Member State, of offers of employment corresponding to their occupational qualifications and to take, where appropriate, the necessary steps in order to be engaged.¹⁷ According to the Court, a period of six months does not jeopardize the effectiveness of the principle of free movement. Consequently, there is a possibility for Member States to provide for legislation stating that if an EU national has not found employment after six months he may be required to leave the territory of the host Member State (subject to appeal). However, if the Union citizen provides evidence that he is continuing to seek employment and that he has genuine chances of being engaged, this EU citizen should not be forced to leave the host Member State.¹⁸ For the first time, the Court of Justice explicitly overlooked the three-month deadline set by the Member States.¹⁹ However, the Court has not ruled that a period of three months is too short if the EU jobseeker is not forced to leave the territory at the end of that period.²⁰

In his opinion on the Antonissen case, advocate general M. Darmon states: *“If, in this case, one were to allow the rules on residence to be determined by national laws this would be tantamount in the final analysis to leaving it to national laws to define the very content of the status of a Community national seeking employment in the territory of another Member State, and that content would, of course, be liable to vary considerably from one*

¹⁶ The Court of Justice does not accept a restrictive interpretation of the right to free movement. In Court of Justice 3 June 1986, nr. C-139/85, ECLI:EU:C:1986:223, ‘R.H. Kempf/State Secretary for Justice’, *Jur.* 1986, 1741, para. 13. See also F. VAN OVERMEIREN, “Het vrij verkeer van inactieve Unieburgers en sociale rechten: een Europees sociaal burgerschap voor werkzoekenden?” in I. GOVAERE (ed.), *Europees recht: moderne interne markt voor de praktijkjurist*, Mechelen, Kluwer, 2012, 136; J. -Y. CARLIER en S. SAROLEA, *Droit des étrangers*, Brussel, Larcier, 2016, 294.

¹⁷ The Court of Justice states: “In the absence of a Community provision prescribing the period during which Community nationals seeking employment in a Member State may stay there, a period of six months, such as that laid down in the national legislation at issue in the main proceedings, does not appear in principle to be insufficient to enable the persons concerned to apprise themselves, in the host Member State, of offers of employment corresponding to their occupational qualifications and to take, where appropriate, the necessary steps in order to be engaged and, (...)”. In Court of Justice 26 February 1991, nr. C-292/89, ECLI:EU:C:1991:80, ‘Antonissen’, para. 21.

¹⁸ According to the Flemish Agency for Integration and Civic Integration (Agentschap Integratie en Inburgering), Belgium must allow an EU jobseeker a reasonable period of time to stay on its territory so that he or she can take note of any offers of employment and apply for a job. The Agency refers to the Antonissen case and states that the Court of Justice ruled that a period of six months is a reasonable period to seek employment. See AGENTSCHAP INTEGRATIE & INBURGERING, “Wat zijn de voorwaarden voor verblijf van EU-werkzoekende?”, consulted on www.agii.be/thema/verblijfsrecht-uitwijzing-reizen/unieburger/eu-werkzoekende/wat-zijn-de-voorwaarden-voor-verblijf-als-eu-werkzoekende. According to the Agency, it cannot be inferred from the Antonissen case that six months is a minimum period. The Agency states that the only thing that can be derived from this judgment is that a period of six months is reasonable. In the future, the Court of Justice will have to rule on whether a six-month period is a minimum period (e-mail communication with the Agency).

¹⁹ P. CANNOOT, “De dialoog tussen het Hof van Justitie en de Europese wetgever met betrekking tot het EU-burgerschap en de burgerlijke rechten die daaruit voortvloeien, m.n. het vrij verkeer en de vrije vestiging van personen”, onuitg. masterproef Rechten UGent, 2014, consulted on <https://lib.ugent.be/en/catalog/rug01:002163037?i=0&q=pieter+cannoot&type=master>, 25.

²⁰ J.D.M. STEENBERGEN, T.P. SPIJKERBOER, B.P. VERMEULEN en R. FERNHOUT, *Internationaal Immigratierecht*, Den Haag, Sdu Uitgevers, 1999, 260-261.

country to another. Since the time after which one could no longer rely on being a Community national seeking employment for the purposes of the rules on the free movement of workers would be peculiar to each Member State, the point would be reached where persons in identical situations might be treated differently as regards the enjoyment of rights arising under the freedom of movement of workers (...). Besides, the application by the United Kingdom of a minimum time-limit of six months seems to me to provide a perfect illustration of the risks which I mentioned of a right of residence with a non-uniform content, albeit coming under a fundamental freedom under the Treaty, that of the free movement of workers.”²¹

12. Pursuant to Article 6 of the Citizenship Directive²², every Union citizen has the right to reside in the territory of another Member State for a period up to three months without any conditions or formalities other than the requirement to hold a valid identity card or passport.²³ In its original proposal for the Citizenship Directive, the European Commission had provided for a six-month period. The European Council reduced this period to three months.²⁴ Article 6 of the Citizenship Directive was transposed into Article 41(1) of the Aliens Act²⁵, which states that the right of entry is recognised for Union citizens upon presentation of a valid identity card or passport. However, after these three months, EU citizens will have to fulfil certain conditions, depending on their status in the host Member State. Every Union citizen has the right to reside in Belgium for more than three months if he meets the conditions set out in Article 40, § 4 of the Aliens Act and Article 41, § 1 of the Aliens Act. Pursuant to Article 40, § 4, 1° of the Aliens Act, a Union citizen may reside in Belgium if he is either an employed or self-employed person or if he enters the Kingdom in order to seek work, as long as he can prove that he is still seeking work and has a genuine chance of being engaged. When applying for recognition of their right of residence or at the latest within three months of this application, EU jobseekers must submit certain documents to prove that they are looking for a job and that they have a real chance of being employed. In order to prove that he is looking for a job, the Union citizen must submit a registration with the relevant employment office or copies of letters of application.²⁶ In order to prove that he has a genuine chance of being engaged, personal circumstances, such as diplomas obtained, vocational training received or planned, and the duration of unemployment should be taken into account.²⁷

13. In a (non-binding) Communication from the European Commission to the European Parliament of 25 November 2013²⁸, the Commission clarified: “Jobseekers have a right of residence of six months without conditions and formalities, or even longer if they have a real chance of finding a job. The Commission relies on Consideration 9 and Articles 7 and 14(4)(b) of the Citizenship Directive. Indeed, Consideration 9 states: Union

²¹ Concl. ADV.-GEN. DARMON concerning Court of Justice, 26 Februari 1991, nr. C-282/89, ECLI:EU:C:1991:80, ‘Antonissen’.

²² DIRECTIVE 2004/38/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC, *PB* L 158. Hereinafter ‘Citizenship Directive’.

²³ Article 6 Citizenship Directive.

²⁴ H. VERSCHEUREN, “De nieuwe Europese verblijfsrichtlijn 2004/38 sinds 30 april 2006 van toepassing: het Europese burgerschap op kruissnelheid”, *T. Vreemd.* 2006, nr. 2, (97) 109.

²⁵ ‘Aliens Act’ stands for ‘Wet van 15 december 1980 betreffende de toegang tot het grondgebied, het verblijf, de vestiging en de verwijdering van vreemdelingen’.

²⁶ Article 50, §2, 3° a) Aliens Decree. (Aliens Decree stands for ‘Koninklijk besluit van 8 oktober 1981 betreffende de toegang tot het grondgebied, het verblijf, de vestiging en de verwijdering van vreemdelingen’).

²⁷ Article 50, §2, 3° b) Aliens Decree.

²⁸ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee of the Regions, 25 november 2013, COM (2013) 837, par. 2.1.

citizens should have the right to reside in the territory of the host Member State for a maximum period of three months without any formalities other than the possession of a valid identity card or passport being required, without prejudice to more favourable treatment for jobseekers, as recognized by the case law of the Court of Justice²⁹.”

3.2 Legal framework of the second preliminary question

14. The Belgian Council of State asks the Court of Justice whether the CALL, when acting within the scope of an action for annulment of a decision refusing recognition of the right of residence of an EU citizen of more than three months, is obliged to take account of new factual elements which occurred after the final decision of the Immigration Office has been taken.

15. The person concerned may lodge an appeal for annulment with the CALL against decisions taken by the Immigration Office.³⁰ Pursuant to Article 39/2, § 2 of the Aliens Act, the CALL has the power to rule on administrative appeals brought for violation of substantial or prescribed forms, exceeding or diversion of power. Within the framework of an action for annulment, the CALL has the power to annul administrative acts *ex tunc* and *erga omnes*. The CALL restores the legal order, but does not rule on the violation of the subjective rights of the person concerned. The CALL decides exclusively on the legality of the administrative decision.³¹

4 Results of the study

4.1 First preliminary question

4.1.1 Case law of the Council for Alien Law Litigation³²

16. The analysed judgments of the Dutch and the French language role can be divided into three categories. The first category concerns judgments in which the CALL recognises, by means of the Antonissen case, that Union citizens seeking employment must be given a reasonable period of time to apprise themselves, in the host Member State, of offers of employment corresponding to their occupational qualifications and to take, where appropriate, the necessary steps in order to be engaged. This category includes judgments in which the CALL merely cites the Antonissen case without explicit reference to the requirement of a reasonable period of time. In these judgments, the CALL does not decide whether this period should be at least six months. A second category concerns judgments in which the CALL recognises a period of six months as a reasonable period. The third category contains judgments in which the CALL recognises a period of less than six months as a reasonable period.

²⁹ “Case law of the Court of Justice” refers to the Antonissen case of 26 February 1991.

³⁰ L. DENYS, “Overzicht van rechtspraak Raad voor Vreemdelingenbetwistingen gerechtelijke jaren 2009-2010 tot 2017-2018 (tweede deel)”, *RW* 2019, nr. 30, (1163) 1163.

³¹ C. BAMPS, et.al., *10 jaar Raad voor Vreemdelingenbetwistingen. Daadwerkelijke rechtsbescherming*, (s.l.), Die Keure, 2017, (14) 17.

³² See annex with overview of the case law of the Council for Alien Law Litigation.

17. The CALL acknowledges in the majority of its analysed judgments (the first category) that a Union citizen seeking employment must be given a reasonable period of time to inform himself of offers of employment corresponding to his occupational qualifications and to take, where appropriate, the necessary steps in order to be engaged.³³ For this purpose, the CALL bases itself on what the Court of Justice has ruled in the Antonissen case. According to the CALL, the effectiveness of the right to freedom of movement for workers is secured in so far as Community legislation or, in its absence, the legislation of a Member State gives EU citizens a reasonable time, in the territory of the Member State, to apprise themselves of offers of employment corresponding to their occupational qualifications and to take, where appropriate, the necessary steps in order to be engaged.³⁴ However, there is no Community provision setting a time limit for the residence of EU nationals seeking employment in another Member State.³⁵ Furthermore, the case-law of the Court of Justice does not provide for a minimum period of time in which the right of residence as a Union citizen seeking employment must be guaranteed.³⁶ The Belgian national regulation - as can be found in Article 40, § 4, 1° of the Aliens Act and in Articles 50 and 51 of the Aliens Decree - does not provide for a time limit within which an EU jobseeker must have found work.³⁷

After a reasonable period of time, an EU citizen may be required to leave the territory of the host Member State, unless the Union citizen provides evidence that he is continuing to seek employment and that he has genuine chance of being engaged.³⁸ In the case *Commission against Belgium* of 20 February 1997 it was held that the Belgian legislation was contrary to Community law. The Belgian legislation obliged jobseekers of another Member State to leave the territory at the end of the period allowed.³⁹ Belgium must therefore give the EU jobseeker the opportunity, following the order to leave the territory, to give evidence that he is continuing to seek employment and has a genuine chance of being engaged. According to a comparative report of 2015 the tests to assess whether a genuine chance of employment exists vary from Member State to Member State.⁴⁰ Consequently the burden of proof differs from Member State to Member State. The comparative report states that it appears from case law of the CALL that the term “a genuine chance of employment” is restrictively interpreted and marginal employment may not suffice to demonstrate a genuine chance of employment.⁴¹ In

³³ RvV 10/11/2010, nr. 51.022; RvV 31/08/2011, nr. 65935; RvV 26/03/2012, nr. 78016; RvV 21/06/2012, nr. 83455; RvV 25/10/2013, nr. 112.781; RvV 13/11/2014, nr. 133.163; RvV 13/03/2015, nr. 140.965; RvV 09/04/2015, nr. 142.917; RvV 09/04/2015, nr. 142.926; RvV 26/06/2015, nr. 148.637; RvV 26/06/2015, nr. 148.651; RvV 04/09/2015, nr. 151.830; RvV 14/09/2015, nr. 152.411; RvV 21/09/2015, nr. 152.984; RvV 03/06/2016, nr. 169.072; RvV 24/06/2016, nr. 170.483; RvV 15/07/2016, nr. 171.955; RvV 24/11/2017, nr. 195.523; RvV 19/04/2017, nr. 185.549; RvV 22/05/2017, nr. 187.230; RvV 08/03/2018, nr. 200.868; CCE 28/06/2018, n° 206.186; RvV 24/01/2019, nr. 215.684; CCE 01/03/2019, n° 217.849; CCE 09/07/2019, n° 223.768.

³⁴ RvV 26/03/2012, nr. 78.016; RvV 21/06/2012, nr. 83.455; RvV 13/11/2014, nr. 133.163; RvV 2/02/2015, nr. 137.745; RvV 13/03/2015, nr. 140.965; RvV 9/04/2015, nr. 142.917; RvV 21/09/2015, nr. 152.984; RvV 22/05/2017, nr. 187.230; CCE 1/03/2019, n° 217.849.

³⁵ RvV 26/03/2012, nr. 78.016; RvV 13/11/2014, nr. 133.163; RvV 2/02/2015, nr. 137.745; RvV 13/03/2015, nr. 140.965; RvV 21/09/2015, nr. 152.984; RvV 22/05/2017, nr. 187.230; CCE 1/03/2019, n° 217.849.

³⁶ RvV 26/03/2012, nr. 78.016.

³⁷ RvV 26/03/2012, nr. 78.016.

³⁸ RvV 15/06/2015, nr. 147.770; RvV 10/11/2010, nr. 51.022; RvV 25/10/2013, nr. 112.781.

³⁹ Court of Justice 20 February 1997, nr. C-344/95, ECLI:EU:C:1997:81, ‘*Commission/Belgium*’, para. 18.

⁴⁰ C. O'BRIEN, E. SPANVENTA en J. DE CONINCK, “Comparative Report 2015 The concept of worker under Article 45 TFEU and certain non-standard forms of employment”, Project Report, European Commission, Brussels, 2015, 32.

⁴¹ C. O'BRIEN, E. SPANVENTA en J. DE CONINCK, “Comparative Report 2015 The concept of worker under Article 45 TFEU and certain non-standard forms of employment”, Project Report, European Commission, Brussels, 2015, 32. See also for instance RvV 17/12/2012, nr. 93.730.

Belgium, marginal employment occurs when the person concerned works less than 10 to 12 hours per week.⁴² Attending language training, integration training and employability training is assessed by the CALL to the disadvantage of the Union citizen concerned.⁴³ The CALL deduces from following language training, integration training and employability training that the Union citizen considers his chances on the labour market to be low.⁴⁴ An integration training indicates that “the person concerned feels the need to have to learn the language as well as to have a social orientation, as well as a career orientation in order to be able to settle in Belgium and to have a chance of finding work.”⁴⁵ The CALL does not clarify, in a clear manner, how an EU citizen can prove, within a reasonable time, that he is still seeking work and has a genuine chance of being engaged. If, after the order to leave the territory has been issued, new elements appear which show that an EU jobseeker is indeed looking for work and has a genuine chance of being engaged, the person concerned will have to submit a new application based on this new evidence. The CALL has already ruled that the person concerned is always free to submit a new application on the basis of new elements.⁴⁶

In these judgements of the first category, the CALL does not clarify the duration of the reasonable period to find a job. For example, in a judgment of 14 September 2015, the CALL acknowledged that a Union citizen has a reasonable period of time in which to apprise himself of offers of employment corresponding to his occupational qualifications and to take, where appropriate, the necessary steps in order to be engaged. In this case, the applicant has stayed for almost one and a half years in Belgium. The CALL submits that the applicant cannot be followed in his view that he was not given a reasonable period in which to become aware of any offers of employment and to apply for an appropriate employment.⁴⁷ In a judgment of 25 October 2013, the CALL ruled that a period of three and a half months cannot be regarded as a reasonable period.⁴⁸

18. In a limited number of judgments (the second category), the CALL ruled that an EU jobseeker is entitled to six months as a reasonable period of time to prove that he can find a job. A period of six months is not insufficient to allow the Union citizen to apprise himself of offers of employment and does not jeopardize the effectiveness of the principle of freedom of movement.⁴⁹ In a judgment dated 4 September 2015, the CALL ruled that the six-month period was respected by the Immigration Office, since the person concerned can be forcibly removed at the earliest after the expiry of a period of 30 days.⁵⁰ By taking into account the 30-day period in which a Union citizen must leave the territory, the CALL obtains, artificially, a period of six months. However, within the period

⁴² C. O'BRIEN, E. SPANVENTA en J. DE CONINCK, “Comparative Report 2015 The concept of worker under Article 45 TFEU and certain non-standard forms of employment”, Project Report, European Commission, Brussels, 2015, 27.

⁴³ C. O'BRIEN, E. SPANVENTA en J. DE CONINCK, “Comparative Report 2015 The concept of worker under Article 45 TFEU and certain non-standard forms of employment”, Project Report, Europese Commissie, Brussels, 2015, 69.

⁴⁴ RvV 21/09/2015, nr. 152.984; RvV 4/09/2015, nr. 151.380.

⁴⁵ RvV 4/09/2015, nr. 151.380.

⁴⁶ RvV 9/04/2018, nr. 202.111; RvV 24/11/2017, nr. 195.532; RvV 10/07/2015, nr. 149.533; RvV 18/05/2015, nr. 145.504; RvV 10/06/2014, nr. 125.377; RvV 16/01/2014, nr. 117.024; RvV 15/12/2014, nr. 135.055; RvV 30/06/2011, nr. 64.264.

⁴⁷ RvV 14/09/2015, nr. 152.411.

⁴⁸ RvV 25/10/2013, nr. 112.781: the EU jobseeker was unemployed for three months and a half after her last employment. The Immigration Office refused her application for registration of her residence right. The documents submitted to the Immigration Office show that the applicant searched very intensively for work. The CALL followed the applicant in its argumentation that the Immigration Office did not take sufficient account of the fact that the applicant had only been looking for work for a few months before the Immigration Office took the contested decision.

⁴⁹ RvV 26/03/2012, nr. 78.016; RvV 13/11/2014, nr. 133.163; RvV 2/02/2015, nr. 137.745; RvV 13/03/2015, nr. 140.965; RvV 9/04/2015, nr. 142.926; RvV 21/09/2015, nr. 152.984; RvV 22/05/2017, nr. 187.230; RvV 24/11/2017, nr. 195.523; CCE 1/03/2019, n° 217.849.

⁵⁰ RvV 4/09/2015, nr. 151.830.

of 30 days, the EU jobseeker does not have a right of residence as this was refused by the Immigration Office. It is therefore illogical to state that an EU jobseeker can enjoy the useful effect of the right to free movement within these thirty days. In a judgment, dated 2 February 2015, the jobseeker had been given just over 5 months to look for employment. During this period the applicant had concluded a pathway-to-work guidance offered by the public employment services VDAB and Actiris. This means that the EU jobseeker is assigned a route counsellor who guides him, often in his own language, during the integration process. According to the CALL such an agreement exists to help the jobseeker find a suitable job. The CALL ruled that, since six months had not passed, that the Immigration Office did not give the applicant a reasonable period of time. The CALL states: "It follows that Member States must respect a reasonable period of time and that six months can be considered a reasonable period of time to prove that you can find a job. In the present case, it appears that the defendant did not allow six months to elapse before taking a decision."⁵¹ In judgments of 12 May 2017 and 8 March 2018, the CALL ruled that a foreign national who proposes to emigrate to Belgium for the purpose of employment may be expected to have an appropriate employment relationship six months after his entry into the Kingdom or to have concrete prospects of employment. According to the CALL, the applicant had to demonstrate that she had a concrete prospect of employment, six months after entry, in order to prove that she had a genuine chance of being engaged.⁵²

19. In general, the CALL thus considers six months to be a reasonable period of time. However, six months is not regarded as a *de facto minimum period*. In five judgments (the third category) the Immigration Office put an end to the right of residence of EU jobseekers before a period of six months had elapsed since the application for a declaration of registration as an EU worker or an EU jobseeker. According to the CALL, a period of less than six months can ensure the effectiveness of the principle of free movement.⁵³ The CALL argues that although, in the light of the Antonissen case, a period of six months is considered reasonable to enable an EU jobseeker to inform himself of offers of employment in the host Member State, a shorter period may nevertheless ensure the effectiveness of the principle of freedom of movement laid down in Article 45 TFEU.⁵⁴ Depending on the personal circumstances of the Union citizen, the CALL may consider that a period of less than six months is a reasonable period to apprise himself of offers of employment and, where appropriate, taking the necessary steps to be engaged.⁵⁵

⁵¹ RvV 2/02/2015, nr. 137.745; L. DENYS, *Overzicht van het vreemdelingenrecht*, Heule, INNI, 2019, 256.

⁵² RvV 12/05/2017, nr. 186.720: In the present case, despite the fact that the applicant claimed to be learning Dutch, no supporting documents were submitted. The applicant had also deposited proof of lessons, diplomas and a student job in the country of origin. These documents were not regarded as proof that the EU national would have a genuine chance of being engaged in Belgium if, in spite of those diplomas and work experience, that national does not demonstrate that, six months after his entry into the Kingdom, he has any concrete prospect of being employed; RvV 8/03/2018, nr. 200.868.

⁵³ See RvV 26/03/2012, nr. 87.016: 5 months and 14 days; RvV 22/05/2017, nr. 187.230: 5 months and 25 days; RvV 15/07/2016, nr. 171.955: 5 months and 30 days; CCE 28/06/2018, n° 206.186: 4 months and 20 days; CCE 1/03/2019, n° 217.849: 4 months and 16 days.

⁵⁴ CCE 28/06/2018, n° 206.186; CCE 1/03/2019, n° 217.849.

⁵⁵ RvV 26/03/2012, nr. 78.016: The CALL states that a Union citizen with the required qualifications can be expected to find work within five months of the application if he is looking for a job in a sector that is suffering from a serious shortage; RvV 22/05/2017, nr. 187.230: The CALL considers that the applicant cannot seriously claim that the defendant has acted hastily in granting almost six months to prove that it has a genuine chance of being engaged. The applicant cannot maintain that the Immigration Office did not take into account the entire six-month period the applicant spent in the Kingdom between his application and the decision, since the contested decision points out that, during that period, he did not manage to work for even one day and that he has no concrete prospect of employment at all; RvV 15/07/2016, nr. 171.955: Since the applicant can only provide marginal employment after a reasonable period of almost six months without further information, which is not disputed, the Immigration

4.1.2 Reasoning by analogy: involuntary unemployment

20. Although the raised preliminary question relates to the period during which Union citizens seeking employment are given the opportunity to apprise themselves with offers of employment in an EU Member State, an analogy can be found with the minimum period of six months during which an involuntarily unemployed person retains his status as an employee.

21. The Court of Justice ruled in the Tarola case⁵⁶ that a Union citizen who has exercised his right of free movement and who, in accordance with Article 7(1)(a) of the Citizenship Directive, has received the status of worker by being employed for a period of two weeks after becoming involuntarily unemployed, will retain the status of worker for an additional period of at least six months, provided that the person concerned has registered as a jobseeker with the competent authority. Consequently, in accordance with the principle of equal treatment laid down in Article 24(1) of the Citizenship Directive, it will be for the national court to determine whether he is entitled to social assistance benefit.⁵⁷

22. Pursuant to Article 42bis, §2, 3° of the Aliens Act, it is stipulated that a Union citizen who is in a state of duly established involuntary unemployment at the end of a temporary employment contract of less than one year, or if this person has become involuntarily unemployed during the first twelve months and is registered as a jobseeker with the competent employment office, may retain the status of employee for at least six months.⁵⁸ These jobseekers must prove that they have already worked and have subsequently become involuntarily unemployed.⁵⁹ Article 42bis of the Aliens Act is a transposition of Article 7(3)(c) of the Citizenship Directive and reads as follows: *“The right of residence of a Union citizen may be terminated by the Minister or his delegate if he no longer satisfies the conditions referred to in Article 40, §4 and in Article 40bis, §4, second paragraph, (...). A Union citizen shall, however, retain the right of residence as provided for in Article 40, §4, first paragraph, 1° in the following cases: (...) 3° he is in duly recorded involuntary unemployment at the end of a temporary employment contract of less than one year or he has become involuntarily unemployed during the first twelve months and has registered as a jobseeker with the competent employment office. In this case, the status of worker shall be retained for at least six months.”* If a Union citizen does not or no longer satisfies the conditions, his right of residence may be terminated. However, it is possible to retain EU worker status for six months after involuntary termination of employment. Only when these six months have elapsed the Union citizen can no longer be regarded as a worker.⁶⁰ During this six-month period, the Union citizen can look for work without interruption and does not have to prove that he or she has a genuine chance of being engaged.

Office was able to conclude, in a manifestly reasonable manner, that it has not demonstrated that the Union citizen has a real prospect of non-marginal employment.

⁵⁶ Court of Justice, 11 April 2019, nr. C-483/17, ECLI:EU:C:2019:309, ‘Tarola’, para. 58.

⁵⁷ F. GREMMELPREZ and H. KROEZE, “Rechtspraakoverzicht. Hof van Justitie van de Europese Unie (1 februari 2019 tot 30 april 2019)”, *T. Vreemd.* 2019, nr. 3 (280) 281; AGENTSCHAP INTEGRATIE & INBURGERING, “Hof van Justitie - C-483/17 - 11-04-2019”, consulted on www.agii.be/hof-van-justitie-11-04-2019.

⁵⁸ Article 42bis, §2, 3° Aliens Act.

⁵⁹ RvV 9/09/2019, nr. 225 827.

⁶⁰ RvV 25/06/2013, nr. 105.847.

In the cases analysed of the CALL where this article was raised, a period of six months of involuntary unemployment had always elapsed. Within this period, the Union citizen was still considered to be an employee. The aim was to give the Union citizen the opportunity to seek a new employment for a period of six months.⁶¹

The purpose of Article 42bis, §2, 3° of the Aliens Act is to give the Union citizen a period in which to look for new employment. This objective corresponds to the objective of the reasonable period of time referred to in the first preliminary question. It does not seem illogical to state that six months should be a minimum period for EU jobseekers to inform themselves of the job offers that match their professional qualifications and, where appropriate, to take the necessary steps to be engaged.

4.1.3 Conclusion for the first preliminary question

23. In general, the CALL considers six months to be a reasonable period of time for an EU jobseeker to apprise himself, on the territory of the host Member State, of offers of employment, and take the necessary steps in order to be engaged. The CALL does not apply minimum periods when assessing the right of residence of an EU jobseeker on Belgian territory. Depending on the personal circumstances of the Union citizen, the CALL may even consider that a period of less than six months is a reasonable period to apprise himself of offers of employment and, where appropriate, taking the necessary steps to be engaged.

4.2 Second preliminary question

24. The Council of State asks the Court of Justice whether the CALL, when acting within the scope of an action for annulment of a decision refusing recognition of the right of residence of an EU citizen of more than three months, is obliged to take account of new factual elements which occurred after the final decision of the Immigration Office. An analysis of the case law of the Dutch and French language role shows that the CALL decides in a consistent way, contrary to its assessment of the first preliminary question.

25. The Union citizen provides documents supporting the application for recognition of the right of residence of more than three months (on the basis of Article 40, § 4 of the Aliens Act). These supporting documents may or may not date from after the contested decision of the Immigration Office. The Immigration Office cannot be held responsible for not taking into account information of which it was not made aware before it took the contested decision.⁶² This principle is confirmed by the case law of the Council of State, which states that the Immigration Office cannot be accused of not taking into account elements that were not submitted to it on time.⁶³ The documents on which the Immigration Office can base its decision must be kept in the administrative

⁶¹ RvV 10/11/2010, nr. 51022; RvV 31/08/2011, nr. 65935; RvV 21/06/2012, nr. 83455; RvV 09/04/2015, nr. 142.926; RvV 11/08/2015, nr. 150.625; RvV 14/09/2015, nr. 152.411.

⁶² RvV 20/12/2010, nr. 53.438; RvV 30/06/2011, nr. 64.264; RvV 30/06/2011, nr. 64.268; RvV 19/09/2011, nr. 66.739; RvV 19/09/2011, nr. 66.784; RvV 28/10/2011, nr. 69.383; CCE 28/11/2011, n° 70.740 (The CALL does not express an opinion as to whether it takes account of new elements in the review of legality); CCE 19/06/2012, n° 84.862; RvV 7/05/2013, nr. 102.551; RvV 7/05/2013, nr. 102.550; CCE 19/09/2013, n° 110.150; CCE 30/09/2013, n° 111.076; CCE 31/03/2015, n° 142.401; CCE 30/04/2015, n° 144.625; RvV 10/07/2015, nr. 149.509; RvV 21/09/2015, nr. 152.984; RvV 18/03/2016, nr. 164.378; RvV 21/04/2016, nr. 166.236; CCE 31/10/2016, n° 177.217; RvV 20/03/2017, nr. 184.041; CCE 16/06/2017, n° 188.535; CCE 8/02/2018, n° 199.372; RvV 8/03/2018, nr. 200.868; RvV 9/04/2018, nr. 202.111; CCE 30/11/2018, n° 213.282; CCE 30/11/2018, n° 213.281.

⁶³ It concerns: RvS 27/02/2001, nr. 93.593, RvS 26/08/1998, nr. 87.676, RvS 11/02/1999, nr. 78.664, RvS 16/09/1999, nr. 82.272. In these judgments, the CALL referred to the established case law of the Council of State: CCE 28/02/2011, n° 57.049; CCE 19/07/2012, n° 84.855; CCE 13/12/2012, n° 93.466; CCE 31/05/2013, n° 104.239; CCE 19/09/2013, n° 110.150.

file, or submitted to the Immigration Office at the latest before the decision is taken.⁶⁴ The burden of proof when submitting an application rests with the applicant. It is up to the applicant to provide all the information he considers useful to support the application. The duty of care that rests on the administrative authority also applies to the legal subjects within the framework of a reciprocal administrative law.⁶⁵ Following the jurisprudence of the Council of State, the CALL points out that the principle of due care does not mean that the administration is always obliged to request additional documents from the person concerned when it appears that the documents submitted by him are no longer up to date, when the person can be considered to be aware that these documents are no longer up to date, as they pertain to his own situation, or when the person concerned fails to provide the necessary documents.⁶⁶

26. The CALL does not act as an appeal court which will assess the true facts of the case.⁶⁷ He only examines whether the Immigration Office has been able to reasonably establish the facts made and whether there is no information in the case file that is incompatible with this determination, whether it based its assessment of the application on the correct factual information, whether it assessed it correctly and whether it did not come to its decision unreasonably on that basis.⁶⁸

27. The CALL would assess the merits of the application if, in its review of legality, it were to take into account factual elements dating from after the contested decision.⁶⁹ The CALL stipulates that it would exceed its powers by taking into account, in its review of legality, factual elements dating from after the contested decision.⁷⁰ In its capacity as an administrative tribunal, the CALL has to assess the regularity of an administrative decision on the basis of information available to the Immigration Office at the time of its decision.⁷¹

⁶⁴ RvV 16/06/2017, nr. 188.535; RvV 18/03/2016, nr. 164.378; RvV 10/07/2015, nr. 149.509; RvV 20/03/2015, nr. 142.209, RvV 21/09/2015, nr. 152.984; RvV 22/10/2014, nr. 131.832; RvV 10/12/2014, nr. 134.873.

⁶⁵ See RvS 28/04/2008, nr. 182.450. RvV 9/04/2018, nr. 202.111; RvV 24/11/2017, nr. 195.532.

⁶⁶ RvS 12/03/2013, nr. 222.809, RvV 28/04/2008, nr. 182.450, RvV 20/10/2016, nr. 176.671, RvV 9/03/2016, nr. 163.757, RvV 16/07/2015, nr. 149.747; C. Adam, et.al., *10 jaar Raad voor Vreemdelingenbetwistingen. Daadwerkelijke rechtsbescherming*, (s.l.), Die Keure, 2017, (123) 137-138.

⁶⁷ Article 39/2, §2 Aliens Act; L. DENYS, "Overzicht van rechtspraak Raad voor Vreemdelingenbetwistingen gerechtelijke jaren 2009-2010 tot 2017-2018 (tweede deel)", *RW* 2019, nr. 30, (1163) 1172. This is confirmed in the case law, which states that when the CALL, as a judge of annulment, examines an administrative decision in the light of the law, it does not act as an appeal court which, at the request of the person seeking justice, will assess the true facts of the case.

⁶⁸ RvS 25/01/2010, nr. 37.471; RvV 22/10/2014, nr. 131.832; RvV 14/09/2017, nr. 192.034; L. DENYS, "Overzicht van rechtspraak Raad voor Vreemdelingenbetwistingen gerechtelijke jaren 2009-2010 tot 2017-2018 (tweede deel)", *RW* 2019, nr. 30, (1163) 1172.

⁶⁹ RvV 30/06/2011, nr. 64.268; CCE 31/05/2013, n° 104.239; RvV 26/07/2013, nr. 107.479; RvV 4/10/2013, nr. 111.316; RvV 17/01/2014, nr. 117.101; RvV 22/10/2014, nr. 131.832; RvV 18/03/2016, nr. 164.378; RvV 21/04/2016, nr. 166.236; RvV 4/10/2018, nr. 210.479.

⁷⁰ CCE 28/02/2011, n° 57.049; RvV 30/06/2011, nr. 64.264; RvV 30/06/2011, nr. 64.268; RvV 19/09/2011, nr. 66.739; RvV 28/10/2011, nr. 69.383; RvV 21/02/2012, nr. 75.506; RvV 28/02/2012, nr. 76.134; RvV 21/06/2012, nr. 83.455; CCE 19/11/2012, n° 91.581; RvV 19/07/2013, nr. 106.948; RvV 26/07/2013, nr. 107.479; RvV 4/10/2013, nr. 111.316; RvV 16/01/2014, nr. 117.024; RvV 17/01/2014, nr. 117.101; RvV 21/02/2014, nr. 119.317; RvV 25/04/2014, nr. 123.088; RvV 10/06/2014, nr. 125.377; RvV 29/07/2014, nr. 127.584; RvV 22/10/2014, nr. 131.832; RvV 10/12/2014, nr. 134.873; RvV 20/03/2015, nr. 142.209; RvV 18/05/2015, nr. 145.504; RvV 10/07/2015, nr. 149.533; RvV 10/07/2015, nr. 149.509; RvV 11/08/2015, nr. 150.625; RvV 21/09/2015, nr. 152.978; RvV 21/09/2015, nr. 152.984; RvV 18/03/2016, nr. 164.378; RvV 21/04/2016, nr. 166.236; RvV 2/03/2017, nr. 183.284; RvV 20/03/2017, nr. 184.041; CCE 30/05/2017, n° 187.772; RvV 16/06/2017, nr. 188.535; RvV 14/09/2017, nr. 192.034; RvV 8/03/2018, nr. 200.868; RvV 5/03/2018, nr. 200.667; CCE 28/06/2018, n° 206.186; RvV 4/10/2018, nr. 210.479; RvV 8/05/2019, nr. 220.869.

⁷¹ CCE 28/02/2011, n° 57.049. Also: RvV 30/06/2011, nr. 64.264; RvV 30/06/2011, nr. 64.268; RvV 19/09/2011, nr. 66.739; RvV 28/10/2011, nr. 69.383; CCE 19/01/2012, n° 73.542; RvV 21/02/2012, nr. 75.506; CCE 28/02/2012, n° 75.912; RvV 21/06/2012, nr. 83.455; CCE 31/03/2013, n° 104.056; RvV 26/07/2013, nr. 107.479; RvV 19/07/2013, nr. 106.948; RvV 25/10/2013, nr. 112.785;

This principle has also been confirmed by the case law of the Council of State, which states that the legality of an administrative act is assessed in the light of the elements of which the authority is aware at the time of its decision.⁷² Consequently, the CALL cannot take into account elements and documents subsequently submitted with the appeal.⁷³ The Council may not, within the framework of its power to review legality, take into account documents that were not made available to the Immigration Office at the time when the contested decision was taken⁷⁴, since the assessment by the CALL must be carried out at the same time the contested decision was taken.⁷⁵ In a judgment of 25 October 2013 of the Dutch language role, the CALL explicitly states in this respect

RvV 4/10/2013, nr. 111.316; RvV 17/01/2014, nr. 117.101; RvV 16/01/2014, nr. 117.024; RvV 21/02/2014, nr. 119.317; RvV 18/03/2014, nr. 120.811; RvV 25/04/2014, nr. 123.088; CCE 30/04/2014, n° 123.503; RvV 10/06/2014, nr. 125.377; CCE 25/06/2014, n° 126.235; RvV 29/07/2014, nr. 127.584; RvV 22/10/2014, nr. 131.832; RvV 10/12/2014, nr. 134.873; RvV 15/12/2014, nr. 135.055; RvV 2/02/2015, nr. 137.710; CCE 16/02/2015, n° 138.614; RvV 20/03/2015, nr. 142.209; RvV 18/05/2015, nr. 145.504; RvV 10/07/2015, nr. 149.533; RvV 10/07/2015, nr. 149.509; RvV 11/08/2015, nr. 150.625; RvV 21/09/2015, nr. 152.978; RvV 21/09/2015, nr. 152.984; RvV 18/03/2016, nr. 164.378; CCE 13/04/2016, n° 165.684; RvV 21/04/2016, nr. 166.236; RvV 3/06/2016, nr. 169.072; CCE 20/06/2016, n° 170.162; CCE 27/10/2016, n° 176.978; CCE 31/10/2016, n° 177.217; RvV 20/03/2017, nr. 184.041; CCE 30/05/2017, n° 187.772; RvV 16/06/2017, nr. 188.535; CCE 23/06/2017, n° 188.824; RvV 14/09/2017, nr. 192.034; RvV 8/03/2018, nr. 200.868; RvV 5/03/2018, nr. 200.667; RvV 4/10/2018, nr. 210.479; RvV 19/12/2018, nr. 214.243; RvV 8/05/2019, nr. 220.869.

⁷² RvS 27/02/2001, nr. 93.593, RvS 26/08/1998, nr.87.676, RvS 11/02/1999, nr. 78.664, RvS 16/09/1999, nr. 82.272. In these judgments, the CALL referred to the established case law of the Council of State.: CCE 28/02/2011, n° 57.049; CCE 19/07/2012, n° 84.85; CCE 13/12/2012, n° 93.466; CCE 31/05/2013, n° 104.239; CCE 19/09/2013, n° 110.150.

⁷³ This suggests the CALL specifically in subsequent judgments: RvV 10/07/2015, nr. 149.533; RvV 10/07/2015, nr. 149.509. See also: RvV 20/06/2019, nr. 222.892.

⁷⁴ CCE 30/10/2009, n° 33504; CCE 27/11/2009, n° 35.036; RvV 20/12/2010, nr. 53.438; CCE 17/06/2011, n° 63.285; RvV 19/09/2011, nr. 66.784; CCE 19/01/2012, n° 73.542; RvV 6/03/2012, nr. 76.619; RvV 6/03/2012, nr. 76.625; CCE 19/06/2012, n° 84.862; CCE 19/07/2012, n° 84.855; CCE 6/09/2012, n° 87.048; CCE 6/09/2012, n° 87.052; CCE 19/09/2012, n° 87.807; CCE 26/09/2011, n° 67.232; CCE 28/09/2012, n° 88.721; CCE RvV 29/09/2012, n° 88.689; CCE 31/10/2012, n° 90.848; CCE 30/10/2012, n° 90.785; CCE 26/10/2012, n° 90.491; CCE 25/10/2012, n° 90.250; CCE 16/10/2012, n° 89.882; CCE 30/11/2012, n° 92.681; CCE 29/11/2012, n° 92.376; CCE 19/11/2012, n° 91.587; CCE 19/11/2012, n° 91.583; CCE 8/11/2012, n° 91.110; CCE 20/12/2012, n° 94.073; CCE 29/01/2013 n° 96.049; CCE 26/02/2013, n° 97.875; CCE 31/03/2013, n° 104.056; RvV 7/05/2013, nr. 102.551; RvV 7/05/2013, nr. 102.550; CCE 28/06/2013, n° 106.078; CCE 27/06/2013, n° 105.947; RvV 19/07/2013, nr. 106.948; CCE 22/07/2013, n° 107.016; CCE 22/08/2013, n° 108.405; CCE 30/09/2013, n° 111.076; CCE 30/09/2013, n° 111.067; CCE 19/09/2013, n° 110.095; CCE 19/09/2013, n° 110.094; CCE 22/10/2013, n° 112.533; CCE 17/10/2013, n° 112.094; CCE 28/11/2013, n° 114.642; CCE 24/03/2014, n° 121.286; CCE 18/03/2014, n° 120.792; CCE 28/02/2014, n° 119.907; CCE 27/02/2014, n° 119.703; CCE 27/02/2014, n° 119.688; CCE 29/04/2014, n° 123.369; CCE 30/04/2014, n° 123.503; CCE 30/04/2014, n° 123.426; CCE 30/04/2014, n° 123.424; CCE 25/06/2014, n° 126.199; CCE 4/09/2014, n° 128.716; CCE 7/11/2014, n° 132.888; CCE 18/12/2014, n° 135.354; RvV 15/12/2014, nr. 135.055; CCE 15/01/2015, n° 136.219; CCE 20/01/2015, n° 136.705; CCE 27/01/2015, n° 137.294; CCE 24/02/2015, n° 139.286; CCE 31/03/2015, n° 142.401; CCE 30/04/2015, n° 144.625; CCE 21/05/2015, n° 145.760; CCE 20/08/2015, n° 151.060; CCE 29/10/2015, n° 155.828; CCE 18/11/2015, n° 156.585; CCE 26/02/2016, n° 162.921; RvV 30/06/2016, nr. 169.072; CCE 1/09/2016, n° 173.930; CCE 10/10/2016, n° 176.008; CCE 13/10/2016, n° 176.209; CCE 27/10/2016, n° 176.977; CCE 17/11/2016, n° 177.820; CCE 29/11/2016, n° 178.691; CCE 14/12/2016, n° 179.372; CCE 30/03/2017, n° 184.655; CCE 5/04/2017, n° 185.125; CCE 30/05/2017, n° 187.772; CCE 16/06/2017, n° 188.535; CCE 28/06/2017, n° 189.055; CCE 18/08/2017, n° 190.703; CCE 20/12/2017, n° 196.857; RvV 12/02/2018, nr. 199.532; CCE 8/02/2018, n° 199.372; CCE 30/11/2018, n° 213.281; CCE 22/11/2018, n° 212.695; CCE 22/11/2018, n° 212.693; CCE 14/12/2018, n° 214.053; RvV 19/12/2018, nr. 214.243.

⁷⁵ CCE 30/10/2009, n° 33504; CCE 27/11/2009, n° 35.036; CCE 17/06/2011, n° 63.285; RvV 19/09/2011, nr. 66.784; RvV 19/09/2011, nr. 66.799; CCE 26/09/2011, n° 67.232; CCE 19/01/2012, n° 73.542; RvV 6/03/2012, nr. 76.619; RvV 6/03/2012, nr. 76.625; CCE 19/06/2012, n° 84.862; CCE 28/09/2012, n° 88.721; CCE 29/09/2012, n° 88.689; CCE 19/09/2012, n° 87.807; CCE 6/09/2012, n° 87.052; CCE 6/09/2012, n° 87.048; CCE 16/10/2012, n° 89.882; CCE 25/10/2012, n° 90.250; CCE 26/10/2012, n° 90.491; CCE 30/10/2012, n° 90.785; CCE 31/10/2012, n° 90.848; CCE 8/11/2012, n° 91.110; CCE 19/11/2012, n° 91.583; CCE 19/11/2012, n° 91.587; CCE 29/11/2012, n° 92.376; CCE 30/11/2012, n° 92.681; CCE 20/12/2012, n° 94.073; CCE 29/01/2013 n° 96.049; CCE 26/02/2013, n° 97.875; CCE 31/03/2013, n° 104.056; CCE 28/06/2013, n° 106.078; CCE 27/06/2013, n° 105.947; CCE 22/07/2013, n° 107.016; CCE 22/08/2013, n° 108.405; CCE 19/09/2013, n° 110.095; CCE 19/09/2013, n° 110.094; CCE 30/09/2013, n° 111.076; CCE 30/09/2013, n° 111.067; CCE 17/10/2013, n° 112.094; CCE 22/10/2013, n° 112.533; RvV 25/10/2013, nr. 112.785; CCE 28/11/2013, n° 114.642; CCE 27/02/2014, n° 119.703; CCE 27/02/2014, n° 119.688; CCE 28/02/2014, n° 119.907; CCE 18/03/2014, n° 120.792; CCE 24/03/2014, n° 121.286; CCE 29/04/2014, n° 123.369; CCE 30/04/2014, n° 123.424; CCE 30/04/2014, n° 123.426;

that it concerns an *ex tunc* assessment of the contested decision.⁷⁶ In a judgment of 31 January 2012 of the French language role, the Council used different wording in order to decide, in the context of its review of legality, that it cannot take into account elements that date from after the contested decision. In this judgment, the CALL considered that, in any event, it could not take into account the evolution of the applicant's situation in order to verify the legality of the contested decision.⁷⁷

In four judgments of the Dutch language role, the CALL explicitly states that it is not within the competence of the Council to substitute its assessment of the facts for that of the competent administrative authority.⁷⁸ In eleven judgments of the French language role, the CALL provides that, in the context of the administrative appeal, it may not substitute its assessment for that of the Immigration Office, even in the light of one or more new elements.⁷⁹ The CALL points out that the person concerned is always free to submit a new application on the basis of new elements.⁸⁰

28. According to Article 9 TEU and Article 20 TFEU, every citizen with the nationality of an EU Member State enjoys a European citizenship. The right to move and reside freely in the territory of the EU is the direct consequence of the status of European citizenship.⁸¹ In order to benefit from the right of free movement and residence, the national of an EU Member State must only possess an EU citizenship.⁸² The issue of giving a residence card to the Union citizen is therefore only a confirmation of the status that the Union citizen has already obtained by law.

29. According to the Court of Justice, the right of residence of an EU citizen has declaratory effect. The Court of Justice states: *“The right of nationals of one Member State to enter the territory of another Member State and to reside there for the purposes intended by the EC Treaty is a right conferred directly by the Treaty or, as the case may be, by the provisions adopted for its implementation. The grant of a residence permit to a national of a Member State is to be regarded, not as a measure giving rise to rights, but as a measure by a Member State serving to prove the individual position of a national of another Member State with regard to provisions of*

CCE 30/04/2014, n° 123.503; CCE 25/06/2014, n° 126.199; CCE 4/09/2014, n° 128.716; CCE 7/11/2014, n° 132.888; CCE 18/12/2014, n° 135.354; CCE 15/01/2015, n° 136.219; CCE 20/01/2015, n° 136.705; CCE 27/01/2015, n° 137.294; RvV 2/02/2015, nr. 137.710; CCE 24/02/2015, n° 139.286; CCE 31/03/2015, n° 142.401; CCE 30/04/2015, n° 144.625; CCE 21/05/2015, n° 145.760; CCE 20/08/2015, n° 151.060; CCE 29/10/2015, n° 155.828; CCE 18/11/2015, n° 156.585; CCE 26/02/2016, n° 162.921; RvV 30/06/2016, nr. 169.072; CCE 1/09/2016, n° 173.930; CCE 10/10/2016, n° 176.008; CCE 13/10/2016, n° 176.209; CCE 27/10/2016, n° 176.977; CCE 17/11/2016, n° 177.820; CCE 29/11/2016, n° 178.691; CCE 14/12/2016, n° 179.372; CCE 30/03/2017, n° 184.655; CCE 5/04/2017, n° 185.125; CCE 16/06/2017, n° 188.535; CCE 28/06/2017, n° 189.055; CCE 18/08/2017, n° 190.703; CCE 20/12/2017, n° 196.857; CCE 8/02/2018, n° 199.372; CCE 30/11/2018, n° 213.382; CCE 30/11/2018, n° 213.281; CCE 14/12/2018, n° 214.053; RvV 20/06/2019, nr. 222.892; RvV 21/06/2019, nr. 223.019.

⁷⁶ RvV 25/10/2013, nr. 112.785.

⁷⁷ CCE 31/01/2012, n° 74.295.

⁷⁸ RvV 18/03/2016, nr. 164.378; RvV 21/04/2016, nr. 166.236; RvV 4/10/2018, nr. 210.479; RvV 21/06/2019, nr. 223.019.

⁷⁹ CCE 19/07/2012, n° 84.855; CCE 13/12/2012, n° 93.466; CCE 31/03/2013, n° 104.056; CCE 19/09/2013, n° 110.150; CCE 30/04/2014, n° 123.503; CCE 25/06/2014, n° 126.235; CCE 16/02/2015, n° 138.614; CCE 13/04/2016, n° 165.684; CCE 20/06/2016, n° 170.162; CCE 27/10/2016, n° 176.978; CCE 23/06/2017, n° 188.824.

⁸⁰ RvV 9/04/2018, nr. 202.111; RvV 24/11/2017, nr. 195.532; RvV 10/07/2015, nr. 149.533; RvV 18/05/2015, nr. 145.504; RvV 10/06/2014, nr. 125.377; RvV 16/01/2014, nr. 117.024; RvV 15/12/2014, nr. 135.055; RvV 30/06/2011, nr. 64.264.

⁸¹ Article 21 TFEU; M. CONDINANZI, A. LANG en B. NASCIMBENE, *Citizenship of the Union and Freedom of Movement of Persons*, Leiden- Boston, Martinus Nijhoff Publishers, 2008, 20; F. ROSSIE DAL POZZO, *Citizenship Rights and Freedom of Movement in the European Union*, Nederland, Kluwer Law International, 2013, 51.

⁸² M. CONDINANZI, A. LANG en B. NASCIMBENE *Citizenship of the Union and Freedom of Movement of Persons*, Martinus Nijhoff Publishers, Leiden- Boston, 2008, 24.

European Union law. The declaratory character of residence permits means that those permits merely certify that a right already exists."⁸³ The inability of the CALL, as an administrative court, to take into account factual elements dating from after the contested decision is on a tense footing with the principle of the declaratory effect of the right of residence of a citizen of the European Union. The grant of a residence permit to a national of a Member State is to be regarded, not as a measure giving rise to rights, but as a measure by a Member State serving to prove the individual position of a national of another Member State with regard to provisions of European Union law.⁸⁴

30. Article 31(1) requires that Union citizens have access to judicial and, where appropriate, administrative redress procedures in order to appeal against the decision of an administrative authority. Article 31(3) of the Citizenship Directive provides that legal remedies must include the possibility of reviewing the legality of the decision, as well as the facts and circumstances which justify the proposed measure. Given the fact that in the context of the annulment procedure, the CALL, and by extension the Council of State, can only review the legality of an administrative decision it is unclear whether the Belgian legislation satisfies this requirement.⁸⁵ The CALL consistently confirms in its case law that, in its annulment *contentieux*, it is not entitled, in contrast to an appeal court, to reassess the facts of the case. It can only verify whether the Immigration Office has reached a decision in accordance with the general principles of good administration, taking into account the factual elements available to the Immigration Office at the time when it took the contested decision.

5 Conclusion

31. In relation to the first preliminary question, it can be concluded that the CALL does not apply minimum periods when assessing the right of residence of an EU jobseeker on Belgian territory. The periods used by the Immigration Office and the CALL differ widely without any indication of the reasons for this. They range from a minimum of 4 months to one of 16 days. This does not guarantee legal certainty for EU jobseekers who wish to make use of their right to free movement.

32. With respect to the second preliminary question, the analysis of the case law of the CALL shows that new factual elements dating from after the contested decision taken by the Immigration Office are never taken into account by the CALL, since the Council's competence is limited to the review of legality of the contested decision.

⁸³ Court of Justice 21 July 2011, nr. C-325/09, ECLI:EU:C:2011:498, 'Dias', para. 54; Court of Justice 5 February 1991, nr. C-363/89, ECLI:EU:C:1991:41, 'Roux/België', para. 12; Court of Justice, 8 April 1976, nr. C-48-75, ECLI:EU:C:1976:57, 'Royer', para. 33; Court of Justice, 25 July 2002, nr. C-459/99, ECLI:EU:C:2002:461, 'MRAX', para. 74.

⁸⁴ Court of Justice 21 July 2011, nr. C-325/09, ECLI:EU:C:2011:498, 'Dias', para. 54; Court of Justice 5 February 1991, nr. C-363/89, ECLI:EU:C:1991:41, 'Roux/België', para. 12; Court of Justice, 8 April 1976, nr. C-48-75, ECLI:EU:C:1976:57, 'Royer', para. 33; Court of Justice, 25 July 2002, nr. C-459/99, ECLI:EU:C:2002:461, 'MRAX', para. 74.

⁸⁵ See also H. VERSCHUEREN, "De nieuwe Europese verblijfsrichtlijn 2004/38 sinds 30 april 2006 van toepassing: het Europese burgerschap op kruissnelheid", *T. Vreemd.* 2006, nr. 2, (97) 119.

Annex I:

Overview of the case law of the Council for Alien Law Litigation for the first preliminary question:

Arrestnummer	Gewezen op?	Taalrol	Herkomst verzoeker	Verwijzing naar Antonissen?	Erkenning redelijke termijn 6 maand?	Op grond van?	Verworpen?
51022	10/11/2010	Nederlands	Spanje	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Antonissen	<input checked="" type="checkbox"/>
60470	28/04/2011	Frans	Polen	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Antonissen	<input checked="" type="checkbox"/>
65935	31/8/2011	Nederlands	Spanje	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Antonissen	<input checked="" type="checkbox"/>
77941	23/03/2012	Frans	Griekenland	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input checked="" type="checkbox"/>
78016	26/03/2012	Nederlands	Nederland	<input checked="" type="checkbox"/>	Erkenning RT, maar geen vermelding 6 maand	Antonissen	<input checked="" type="checkbox"/>
83455	21/06/2012	Nederlands	Nederland	<input checked="" type="checkbox"/>	Erkenning RT, maar geen vermelding 6 maand	Antonissen	<input checked="" type="checkbox"/>
112781	25/10/2013	Nederlands	Nederland	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Antonissen	<input type="checkbox"/>
133163	13/11/2014	Nederlands	Nederland	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>
137745	02/02/2015	Nederlands	Bulgarije	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Antonissen	<input type="checkbox"/>
140965	13/03/2015	Nederlands	Griekenland	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Antonissen	<input checked="" type="checkbox"/>
142926	09/04/2015	Nederlands	Slovakije	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Antonissen	<input checked="" type="checkbox"/>
142917	09/04/2015	Nederlands	Spanje	<input checked="" type="checkbox"/>	Erkenning RT, maar geen vermelding 6 maand		<input type="checkbox"/>
147770	15/06/2015	Nederlands	Spanje	<input type="checkbox"/>	Erkenning RT, maar geen vermelding 6 maand	Antonissen	<input type="checkbox"/>
148651	26/6/2015	Nederlands	Nederland	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Antonissen	<input checked="" type="checkbox"/>
148637	26/6/2015	Nederlands	Nederland	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Antonissen	<input checked="" type="checkbox"/>
151830	04/09/2015	Nederlands	Tsjechië	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Antonissen	<input checked="" type="checkbox"/>
152411	14/09/2015	Nederlands	Spanje	<input type="checkbox"/>	Erkenning RT, maar geen vermelding 6 maand		<input checked="" type="checkbox"/>
152984	21/09/2015	Nederlands	Denemarken	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Antonissen	<input checked="" type="checkbox"/>
169072	03/06/2016	Nederlands	Nederland	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Antonissen	<input checked="" type="checkbox"/>
170483	24/06/2016	Nederlands	Nederland	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Antonissen	<input checked="" type="checkbox"/>
171955	15/07/2016	Nederlands	Roemenië	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Antonissen	<input checked="" type="checkbox"/>
185549	19/4/2017	Nederlands	Nederland	<input checked="" type="checkbox"/>	Geen vermelding RT	Antonissen	<input checked="" type="checkbox"/>
186720	12/05/2017	Nederlands	Zweden	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Antonissen	<input checked="" type="checkbox"/>
187230	22/05/2017	Nederlands	Roemenië	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Antonissen	<input checked="" type="checkbox"/>
191333	01/09/2017	Frans	Italië	<input checked="" type="checkbox"/>	spreekt zich niet uit over RE aangezien geen twistpunt		<input checked="" type="checkbox"/>
195523	24/11/2017	Nederlands	Nederland	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Antonissen	<input checked="" type="checkbox"/>
200868	08/03/2018	Nederlands	Verenigd Koninkrijk	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Antonissen	<input checked="" type="checkbox"/>
206186	28/06/2018	Frans	Griekenland	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input checked="" type="checkbox"/>
215684	24/01/2019	Nederlands	Duitsland	<input checked="" type="checkbox"/>	spreekt zich niet uit over RE aangezien geen twistpunt		<input checked="" type="checkbox"/>
217849	01/03/2019	Frans	Italië	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input checked="" type="checkbox"/>
220869	08/05/2019	Nederlands	Nederland	<input checked="" type="checkbox"/>	RvV gaat niet in op het middel van verzoeker		<input type="checkbox"/>
223768	09/07/2019	Frans	Spanje	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Antonissen	<input checked="" type="checkbox"/>

Overview of the case law of the Council for Alien Law Litigation for the second preliminary question:

Arrestnummer	Gewezen op?	Taalrol	Herkomst verzoeker	Hoedanigheid verzoeker	Erkenning van nieuwe elementen	Op welke grond verworpen?
223019	21/06/2019	Nederlands	Spanje	voldoende bestaansmiddelen	Neen	RvV onbevoegd
222892	20/06/2019	Nederlands	Slovakije	werknemer of werkzoekende	Neen	Verzoekerster tijd genoeg om nieuwe elementen aan te halen
220869	8/5/2019	Nederlands	Nederland	voldoende bestaansmiddelen	Neen	RvV onbevoegd
214243	19/12/2018	Nederlands	Nederland	werkzoekende	Neen	RvV onbevoegd
214053	14/12/2018	Frans	Spanje	zelfstandige	Neen	RvV onbevoegd
213282	30/11/2018	Frans	Bulgarije	zelfstandige	niet expliciet vermeld	RvV onbevoegd
213281	30/11/2018	Frans	Spanje	werknemer	Neen	RvV onbevoegd
212695	22/11/2018	Frans	Roemenië	zelfstandige	niet expliciet vermeld	RvV onbevoegd
212693	22/11/2018	Frans	Roemenië	zelfstandige	niet expliciet vermeld	RvV onbevoegd
210479	4/10/2018	Nederlands	Roemenië	voldoende bestaansmiddelen	Neen	RvV onbevoegd
206186	28/6/2018	Frans	Griekenland	werkzoekende	Neen	RvV onbevoegd
202111	9/4/2018	Nederlands	Oostenrijk	voldoende bestaansmiddelen	Niet expliciet vermeld	Mogelijkheid indienen nieuwe aanvraag op basis van nieuwe elementen
200868	08/03/2018	Nederlands	Verenigd Koninkrijk	werkzoekende	Neen	RvV onbevoegd
200667	5/3/2018	Nederlands	Polen	werkzoekende	Neen	RvV onbevoegd
199532	12/2/2018	Nederlands	Spanje	zelfstandige	Neen	RvV onbevoegd
199372	08/02/2018	Frans	Duitsland	werkzoekende	Neen	RvV onbevoegd
196857	20/12/2017	Frans	Frankrijk	voldoende bestaansmiddelen	Neen	RvV onbevoegd
195532	24/11/2017	Nederlands	Nederland	voldoende bestaansmiddelen	Niet expliciet vermeld	Mogelijkheid indienen nieuwe aanvraag op basis van nieuwe elementen
192034	14/9/2017	Nederlands	Hongarije	werkzoekende	Neen	RvV onbevoegd
190703	18/08/2017	Frans	Italië	voldoende bestaansmiddelen	Neen	RvV onbevoegd
189056	28/06/2017	Frans	Letland	voldoende bestaansmiddelen	Neen	RvV onbevoegd
189055	28/06/2017	Frans	Bulgarije	zelfstandige	Neen	RvV onbevoegd
188824	23/06/2017	Frans	Bulgarije	voldoende bestaansmiddelen	Neen	RvV onbevoegd
188535	16/6/2017	Nederlands	Slovakije	voldoende bestaansmiddelen	Neen	RvV onbevoegd
187772	30/05/2017	Frans	Roemenië	werknemer of werkzoekende	Neen	RvV onbevoegd
185125	05/04/2017	Frans	Spanje	werknemer of werkzoekende	Neen	RvV onbevoegd
184655	30/03/2017	Frans	Polen	werkzoekende	Neen	RvV onbevoegd
184041	20/3/2017	Nederlands	Nederland	werknemer	Neen	RvV onbevoegd
183284	2/3/2017	Nederlands	Nederland	Niet gekend	Neen	RvV onbevoegd
179372	14/12/2016	Frans	Frankrijk	werknemer	Neen	RvV onbevoegd
178691	29/11/2016	Frans	Zwitserland	werknemer	N	RvV onbevoegd
177820	17/11/2016	Frans	Frankrijk	werknemer of werkzoekende	Neen	RvV onbevoegd
177217	31/10/2016	Frans	Duitsland	werknemer of werkzoekende	Neen	RvV onbevoegd
176978	27/10/2016	Frans	Roemenië	zelfstandige	Neen	RvV onbevoegd
176977	27/10/2016	Frans	Hongarije	werkzoekende	Neen	RvV onbevoegd
176209	13/10/2016	Frans	Bulgarije	zelfstandige	Neen	RvV onbevoegd
176208	13/10/2016	Frans	Spanje	werknemer of werkzoekende	Neen	RvV onbevoegd
176008	10/10/2016	Frans	Nederland	werkzoekende	Neen	RvV onbevoegd
173930	1/9/2016	Frans	Bulgarije	werkzoekende	Neen	RvV onbevoegd
170162	20/06/2016	Frans	Spanje	werkzoekende	Neen	RvV onbevoegd

169072	3/6/2016	Nederlands	Nederland	werkzoekende	Neen	RvV onbevoegd
166236	21/4/2016	Nederlands	Portugal	voldoende bestaansmiddelen	Neen	RvV onbevoegd
165684	13/04/2016	Frans	Roemenië	zelfstandige	Neen	RvV onbevoegd
164378	18/3/2016	Nederlands	Nederland	student	Neen	RvV onbevoegd
162921	26/02/2016	Frans	Verenigd Koninkrijk	werkzoekende	Neen	RvV onbevoegd
156585	18/11/2015	Frans	Italië	werknemer of werkzoekende	Neen	RvV onbevoegd
155828	29/10/2015	Frans	Frankrijk	werkzoekende	Neen	RvV onbevoegd
152984	21/9/2015	Nederlands	Denemarken	werkzoekende	Neen	RvV onbevoegd
152978	21/09/2015	Nederlands	Nederland	voldoende bestaansmiddelen	Neen	RvV onbevoegd
151060	20/08/2015	Frans	Spanje	werknemer of werkzoekende	Neen	RvV onbevoegd
150625	11/8/2015	Nederlands	Nederland	werknemer of werkzoekende	Neen	RvV onbevoegd
149509	10/7/2015	Nederlands	Nederland	werkzoekende	Neen	RvV onbevoegd
149533	10/7/2015	Nederlands	Portugal	Niet gekend	Neen	RvV onbevoegd
145760	21/05/2015	Frans	Roemenië	zelfstandige	Neen	RvV onbevoegd
145504	18/5/2015	Nederlands	Polen	voldoende bestaansmiddelen	Nene	RvV onbevoegd
144625	30/04/2015	Frans	Spanje	werknemer of werkzoekende	Neen	RvV onbevoegd
142401	31/03/2015	Frans	Frankrijk	werknemer	Neen	RvV onbevoegd
142209	30/3/2015	Nederlands	Verenigd Koninkrijk	werknemer	Neen	RvV onbevoegd
139286	24/02/2015	Frans	Bulgarije	zelfstandige	Neen	RvV onbevoegd
138614	16/02/2015	Frans	Italië	zelfstandige	Neen	RvV onbevoegd
137710	2/2/2015	Nederlands	Bulgarije	werkzoekende	Neen	RvV onbevoegd
137294	27/01/2015	Frans	Italië	werknemer of werkzoekende	Neen	RvV onbevoegd
136705	20/01/2015	Frans	Roemenië	werknemer	Neen	RvV onbevoegd
136219	15/01/2015	Frans	Roemenië	zelfstandige	Neen	RvV onbevoegd
135354	18/12/2014	Frans	Italië	werknemer of werkzoekende	Neen	RvV onbevoegd
135055	15/12/2014	Nederlands	Nederland	voldoende bestaansmiddelen	Neen	RvV onbevoegd
134873	10/12/2014	Nederlands	Nederland	voldoende bestaansmiddelen	Neen	RvV onbevoegd
132888	7/11/2014	Frans	Roemenië	zelfstandige	Neen	RvV onbevoegd
131832	22/10/2014	Nederlands	Nederland	werknemer of werkzoekende	Neen	RvV onbevoegd
131390	14/10/2014	Nederlands	Italië	werknemer of werkzoekende	Niet expliciet vermeld	Verzoeker had alles kunnen overmaken
128716	04/09/2014	Frans	Frankrijk	student	Neen	RvV onbevoegd
127584	29/7/2014	Nederlands	Spanje	werknemer of werkzoekende	Neen	RvV onbevoegd
126235	25/06/2014	Frans	Italië	zelfstandige	Neen	RvV onbevoegd
126199	25/06/2014	Frans	Portugal	werknemer of werkzoekende	Neen	RvV onbevoegd
125377	10/6/2014	Nederlands	Nederland	voldoende bestaansmiddelen	Neen	RvV onbevoegd
123503	30/04/2014	Frans	Frankrijk	werknemer of werkzoekende	Neen	RvV onbevoegd
123426	30/04/2014	Frans	Frankrijk	werknemer	Neen	RvV onbevoegd
123424	30/04/2014	Frans	Italië	werkzoekende	Neen	RvV onbevoegd
123369	24/04/2014	Frans	Spanje	werknemer of werkzoekende	Neen	RvV onbevoegd
123088	25/4/2014	Nederlands	Bulgarije	zelfstandige	Neen	RvV onbevoegd
121286	24/03/2014	Frans	Roemenië	werknemer of werkzoekende	Neen	RvV onbevoegd

120811	18/3/2014	Nederlands	Nederland	werkzoekende	Neen	RvV onbevoegd
120792	18/03/2014	Frans	Frankrijk	voldoende bestaansmiddelen	Neen	RvV onbevoegd
119907	28/02/2014	Frans	Roemenië	zelfstandige	Neen	RvV onbevoegd
119703	27/02/2014	Frans	Slovakije	werknemer of werkzoekende	Neen	RvV onbevoegd
119688	27/02/2014	Frans	Italië	werknemer of werkzoekende	Neen	RvV onbevoegd
119317	21/2/2014	Nederlands	Nederland	zelfstandige	Neen	RvV onbevoegd
117101	17/1/2014	Nederlands	Nederland	werknemer of werkzoekende	Neen	RvV onbevoegd
117024	16/1/2014	Nederlands	Portugal	zelfstandige	Neen	RvV onbevoegd
114642	28/11/2013	Frans	Portugal	werknemer of werkzoekende	Neen	RvV onbevoegd
111316	4/10/2013	Nederlands	Nederland	voldoende bestaansmiddelen	Neen	RvV onbevoegd
112785	25/10/2013	Nederlands	Malta	werknemer	Neen	RvV onbevoegd
112533	22/10/2013	Frans	Nederland	werknemer	Neen	RvV onbevoegd
112094	17/10/2013	Frans	Nederland	werknemer of werkzoekende	Neen	RvV onbevoegd
111067	30/09/2013	Frans	Roemenië	zelfstandige	Neen	RvV onbevoegd
111076	30/09/2013	Frans	Bulgarije	student	Neen	RvV onbevoegd
110150	13/09/2013	Frans	Bulgarije	zelfstandige	Neen	RvV onbevoegd
110095	13/09/2013	Frans	Griekenland	werknemer of werkzoekende	Neen	RvV onbevoegd
110094	13/09/2013	Frans	Italië	werknemer of werkzoekende	Neen	RvV onbevoegd
108405	22/08/2013	Frans	Italië	werknemer	Neen	RvV onbevoegd
107479	26/7/2013	Nederlands	Spanje	werknemer of werkzoekende	Neen	RvV onbevoegd
107016	22/07/2013	Frans	Frankrijk	werknemer of werkzoekende	Neen	RvV onbevoegd
106948	19/7/2013	Nederlands	Nederland	werknemer of werkzoekende	Neen	RvV onbevoegd
106078	28/06/2013	Frans	Roemenië	zelfstandige	Neen	RvV onbevoegd
105947	27/06/2013	Frans	Polen	zelfstandige	Neen	RvV onbevoegd
104240	31/05/2013	Frans	Roemenië	zelfstandige	Neen	RvV onbevoegd
104239	31/05/2013	Frans	Roemenië	zelfstandige	Neen	RvV onbevoegd
104056	31/05/2013	Frans	Spanje	werknemer	Neen	RvV onbevoegd
102550	7/5/2013	Nederlands	Frankrijk	voldoende bestaansmiddelen	Neen	RvV onbevoegd
102551	7/5/2013	Nederlands	Frankrijk	voldoende bestaansmiddelen	Neen	RvV onbevoegd
97875	26/02/2013	Frans	Verenigd Koninkrijk	werknemer of werkzoekende	Neen	RvV onbevoegd
96049	29/01/2013	Frans	Polen	werknemer of werkzoekende	Neen	RvV onbevoegd
94073	20/12/2012	Frans	Spanje	werknemer	Neen	RvV onbevoegd
93466	13/12/2012	Frans	Spanje	werknemer of werkzoekende	Neen	RvV onbevoegd
92681	30/11/2012	Frans	Spanje	werknemer of werkzoekende	Neen	RvV onbevoegd
92376	29/11/2012	Frans	Roemenië	zelfstandige	Neen	RvV onbevoegd
91587	19/11/2012	Frans	Duitsland	werknemer	Neen	RvV onbevoegd
91581	19/11/2012	Frans	Portugal	werknemer	Neen	RvV onbevoegd
91583	19/11/2012	Frans	Spanje	zelfstandige	Neen	RvV onbevoegd
91110	8/11/2012	Frans	Tsjechië	werknemer	Neen	RvV onbevoegd
90848	31/10/2012	Frans	Spanje	werknemer	Neen	RvV onbevoegd
90758	30/10/2012	Frans	Spanje	werknemer of werkzoekende	Neen	RvV onbevoegd

90491	26/10/2012	Frans	Spanje	werknemer of werkzoekende	Neen	RvV onbevoegd
90250	25/10/2012	Frans	Spanje	werknemer	Neen	RvV onbevoegd
89882	16/10/2012	Frans	Frankrijk	werknemer of werkzoekende	Neen	RvV onbevoegd
88721	28/09/2012	Frans	Italië	werknemer of werkzoekende	Neen	RvV onbevoegd
88689	28/09/2012	Frans	Roemenië	zelfstandige	Neen	RvV onbevoegd
87807	19/09/2012	Frans	Spanje	werknemer	Neen	RvV onbevoegd
87052	06/09/2012	Frans	Nederland	voldoende bestaansmiddelen	Neen	RvV onbevoegd
87048	06/09/2012	Frans	Italië	werknemer of werkzoekende	Neen	RvV onbevoegd
84862	19/7/2012	Frans	Frankrijk	student	Neen	RvV onbevoegd
84855	19/07/2012	Frans	Italië	werknemer	Neen	RvV onbevoegd
83455	21/6/2012	Nederlands	Nederland	voldoende bestaansmiddelen	Neen	RvV onbevoegd
76625	6/3/2012	Nederlands	Slovenië	werknemer of werkzoekende	Neen	RvV onbevoegd
76619	6/3/2012	Nederlands	Spanje	werknemer of werkzoekende	Neen	RvV onbevoegd
76134	28/2/2012	Nederlands	Nederland	werknemer	Neen	RvV onbevoegd
75912	28/2/2012	Frans	Spanje	werknemer of werkzoekende	Neen	RvV onbevoegd
75506	21/2/012	Nederlands	Nederland	werknemer	Neen	RvV onbevoegd
74295	31/01/2012	Frans	Frankrijk	werkzoekende	Neen	RvV onbevoegd
73542	19/01/2012	Frans	Italië	werknemer of werkzoekende	Neen	RvV onbevoegd
70740	28/11/2011	Frans	Spanje	werknemer	Neen	RvV onbevoegd
69383	28/10/2011	Nederlands	Nederland	/	Neen	RvV onbevoegd
67232	26/09/2011	Frans	Frankrijk	werknemer	Neen	RvV onbevoegd
66739	19/9/2011	Nederlands	Spanje	werknemer of werkzoekende	Neen	RvV onbevoegd
66799	19/9/2011	Nederlands	Bulgarije	zelfstandige	Neen	RvV onbevoegd
66784	19/9/2011	Nederlands	Duitsland	werknemer of werkzoekende	Neen	RvV onbevoegd
64264	30/6/2011	Nederlands	Bulgarije	voldoende bestaansmiddelen	Neen	RvV onbevoegd
64268	30/6/2011	Nederlands	Spanje	werknemer of werkzoekende	Neen	RvV onbevoegd
63285	17/06/2011	Frans	Roemenië	voldoende bestaansmiddelen	Neen	RvV onbevoegd
57049	28/02/2011	Frans	Roemenië	zelfstandige	Neen	RvV onbevoegd
53438	20/12/2010	Nederlands	Frankrijk	werknemer	Neen	RvV onbevoegd
35036	27/11/2009	Frans	Frankrijk	werknemer	Neen	RvV onbevoegd
33504	30/10/2009	Frans	Frankrijk	werknemer of werkzoekende	Neen	RvV onbevoegd